



remy green <remy@femmelaw.com>

Rodriguez v. City, 21-cv-10815 - Date for Production/Open Files

remy green <remy@femmelaw.com>

Fri, Jun 21, 2024 at 3:51 PM

To: "Scutero, Peter (LAW)" <PScutero@law.nyc.gov>

Cc: Protester Cases <Protests@femmelaw.com>, Sujata Gibson <sujata@gibsonfirm.law>

Hi Peter,

I just got your letter which says:

Unrelated to the March 20th Court Conference, plaintiff recently inquired about defendants' position concerning an application made by the plaintiffs in the Consolidated Protest Cases for an audit of LAB investigatory files as it relates to this case. After review of the filings in the Consolidated Protest Cases, defendants are unaware of any court order requiring the defendants to conduct an audit of LAB investigatory files. Defendants maintain that an audit of these files is not proportional to the needs of this case as the evidentiary value to plaintiff of an audit of LAB investigatory files is minimal, if any at all, and is outweighed by the extraordinary burden any audit would place on defendants.

That is not what this request was -- the audit already happened, and the City failed the audit. As the Court already explained: the audit revealed that a "systematic search [for IAB files] was not done at any point" by the City "and [that fact] is represented by the fact that, in the[] ten [sample audit] files, there were large gaps." 2023-06-21 Tr. at 15-17. Frankly, it sounds like you did not review the transcript or my email on this.

As the Court said then, absent a motion for a protective order from the City, "the default is going to be you just reproduce this" (meaning all the missing IAB files). *Id.* at 31. That production needs to happen here. If the City is refusing to do that, please provide a time to meet and confer Monday or Tuesday.

Yours,

Remy.

J. Remy Green*Partner*

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On Tue, Jun 18, 2024 at 5:01 PM remy green <remy@femmelaw.com> wrote:

Hi Peter,

I don't have the full docket in front of me—we have no issue with the extension, but I want to be cognizant of the discovery end date.

If we have one, we consent assuming that date gets moved accordingly—but if we don't (which is my memory), we can just consent.

Sent from a mobile device, please excuse any thumbing or stumbling.

J. Remy Green

Partner

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On Jun 18, 2024, at 4:58 PM, Scutero, Peter (LAW) <PScutero@law.nyc.gov> wrote:

Hi Remy,

We will be responding to the discovery issues by June 21, 2024, including those relating to IAB. With regard to our response, we do anticipate producing documents on the 21st, but will not have the Academy Transcripts and roll call ready by then. As such, we will be writing the Court for a 30-day extension of time to produce those two items. Will you consent to an extension? Thanks.

Peter Scutero

New York City Law Department

From: remy green <remy@femmelaw.com>

Sent: Tuesday, June 18, 2024 12:16 PM

To: Scutero, Peter (LAW) <PScutero@law.nyc.gov>

Cc: Protester Cases <Protests@femmelaw.com>; Sujata Gibson <sujata@gibsonfirm.law>

Subject: Re: [EXTERNAL] Re: Rodriguez v. City, 21-cv-10815 - Date for Production/Open Files

Following up again.

J. Remy Green

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On Thu, Jun 13, 2024 at 12:22 PM remy green <remy@femmelaw.com> wrote:

Hi Peter,

Following up on our call.

I understand we're on the same page about open files, but you wanted to make sure there actually were any open files -- so I don't think there's anything to do there (other than maybe file a letter letting the judge know we resolved that issue).

But on the IAB issues, I was expecting to hear back from you -- is there a day we can block to have a substantive conversation about those issues with the City ready to take a position?

Yours,

Remy.

J. Remy Green

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On Thu, May 23, 2024 at 4:44 PM Scutero, Peter (LAW) <PScutero@law.nyc.gov> wrote:

I need to confer internally and will get back to you next week.

From: remy green <remy@femmelaw.com>
Sent: Wednesday, May 22, 2024 6:34 PM
To: Scutero, Peter (LAW) <PScutero@law.nyc.gov>
Cc: Protester Cases <Protests@femmelaw.com>; Sujata Gibson <sujata@gibsonfirm.law>
Subject: Re: [EXTERNAL] Re: Rodriguez v. City, 21-cv-10815 - Date for Production/Open Files

Hi Peter,

My asks are bolded below, for easier skimming.

Your email on *York* reminded me that we need to circle back on the open file issue here. **Are we in agreement that open**

files should be produced here, in light of GWG's Order in *In re Policing*?

Additionally, I want to flag that the first big ticket missing item we need to follow up on here is the missing IAB files from *In re Policing*. Specifically, as you may recall, the City silently withheld a massive number of IAB files -- and after an audit, where Plaintiffs were able to select IAB files they happened to know about, as the Court put it, we discovered a "systematic search [for IAB files] was not done at any point" by the City, and in auditing "and [that fact] is represented by the fact that, in the[] ten [sample audit] files, there were large gaps." 2023-06-21 Tr. at 15-17. As the Court said then, absent a motion for a protective order from the City, " the default is going to be you just reproduce this" (meaning all the missing IAB files). *Id.* at 31.

I've attached three of the relevant conference transcripts, so you can (at least in part) get up to speed. The last relevant conference was on June 21, 2023, and the Court stayed all discovery in the run up to ultimate settlement on July 3 (the request) / July 5 (the order granting it), 2023, with the ultimate settlement getting filed on September 5 without the stay ever being lifted.

So, my understanding is that nothing happened after the meet and confer that was ordered after the June 21, 2023 conference on this issue. And my understanding from that conference is that the burden of collecting the missing documents would be negligible, relative to the scale of the missing documents, because using the ICMS system:

- Across *all* files, there are 592 IAB files for schedule A dates that have the word "protest" in the file, and 131 with "protest" and "George Floyd"* (compared to only 72 files that the City produced incomplete portions of, which is two different issues);
- Each can be printed with one click to PDF, with all attachments -- there is a button labeled "Print Entire Case";
- There isn't any value in just doing case worksheets, since the main burden would be going through and printing files.

With some work, apparently, the City was able to figure out how to search ICMS with both "and" and "or" operators, and "'demonstration' or 'protest' or 'Floyd'" between 5/27/2020 and 2/12/2021 produced 741 unique results.

Given that Judge Gorenstein previously said he was assuming the City was to produce everything in the absence of a protective order, that (as the Court explained) this is all part of "a production that [the City was] supposed to have done a year and a half ago" as of the last conference (2023-06-21 'Tr. at 17-18), and the City's representations in the meet and confer were that the limitations it had previously asserted (e.g., that there was no keyword search in ICMS) were not real, **I am hopeful we can just agree to a date for production here.**

If we can't, please let us know when you can meet and confer on this, because we will move to compel in the absence of an agreement.

Yours,

Remy.

J. Remy Green*Partner*

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On Wed, Apr 10, 2024 at 3:46 PM Scutero, Peter (LAW) <PScutero@law.nyc.gov> wrote:

This is fine. Thank you.

Peter Scutero

New York City Law Department

From: remy green <remy@femmelaw.com>
Sent: Wednesday, April 10, 2024 2:04 PM
To: Scutero, Peter (LAW) <PScutero@law.nyc.gov>
Cc: Protester Cases <Protests@femmelaw.com>; Sujata Gibson <sujata@gibsonfirm.law>;
Jianing Zhao <jz632@cornell.edu>; Reed Herter <lrh82@cornell.edu>
Subject: Re: [EXTERNAL] Re: Rodriguez v. City, 21-cv-10815 - Date for Production/Open Files

Hi Peter,

That's fine with us -- See attached draft letter, and let me know if it works for you.

I'll reach out to SDReporters and figure that out.

J. Remy Green*Partner*

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On Wed, Apr 10, 2024 at 1:10 PM Scutero, Peter (LAW) <PScutero@law.nyc.gov> wrote:

Can we do June 21st? Also, we can split the cost for the transcript of the last conference.

Peter Scutero

New York City Law Department

From: remy green <remy@femmelaw.com>

Sent: Tuesday, April 9, 2024 3:57 PM

To: Scutero, Peter (LAW) <PScutero@law.nyc.gov>

Cc: Protester Cases <Protests@femmelaw.com>; Sujata Gibson <sujata@gibsonfirm.law>;
Jianing Zhao <jz632@cornell.edu>; Reed Herter <lrh82@cornell.edu>

Subject: [EXTERNAL] Re: Rodriguez v. City, 21-cv-10815 - Date for Production/Open Files

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Hey Peter,

Just wanted to follow up on this -- I would like to get the letter in asking for a new discovery end date (counting

from the date for the things ordered by the Court) before the nominal end of discovery at the beginning of next week. Can you let us know what the date you'd want to produce what was directed at the last conference is ASAP?

Thanks,

Remy.

J. Remy Green

Partner

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On Mon, Mar 25, 2024 at 8:00 AM remy green <remy@femmelaw.com> wrote:

Hi Peter,

Following up on the conference last week, short term, I think there are two outstanding issues: (1) a date for the items the Court ordered and (2) the open file issue.

On the first, can you give us a date that works for you, and then I am happy to draft a letter with an accordingly updated proposed schedule.

On the second, here's what Judge Gorenstein said on the issue: "I reject the notion that the open investigations shouldn't be produced simply on the theory they aren't complete. ... the plaintiffs know what they're getting when they're getting an open investigation. So I'm rejecting the City's argument on that point." 2021-07-20 Tr. at pp. 17-18 (the rest of that transcript also covers this issue and the arguments on it).

We can put in a letter on (2), unless we're on the same page that the Court would order that produced based on what she said at the conference.

Last, I assume we both need the transcript -- do you want to split ordering that?

Yours,

Remy.

J. Remy Green

Partner

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